IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 635 OF 2005

Mrs. Cristina Sunny Kinny .. Appellant

Vs.

1. The Municipal Corporation of
Gr. Mumbai and anr. .. Respondents

Mr.M.V. Holamagi for the appellant.
Ms.Geeta Joglekar for respondent no.1.
Mr.M.N. Menon for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date : July 21, 2005.

P.C.:

1. The appellant claims to be the owner of the suit structure in L.C. Suit No.943 of 2005. As per her, the plaintiff in the said suit is the tenant and she has been impleaded as defendant no.2 with the Municipal Corporation of Gr. Mumbai as defendant no.1. In the said suit Notice of Motion was moved for stay to the work stoppage notice. The Notice of Motion has been directed to register by the Vacation Court by the impugned order dated 16/5/2005 and the court further directed to the Corporation to go with action as per the impugned notice issued for the work

done in excess or beyond the title map without disturbing the work already executed and for fixing the doors, widows and flooring, according to the plaintiff. The court also observed that there was no need to suspend the intended action of the Corporation. The prayer of the landlady for staying any further activities like fixing the doors, windows etc. was declined. Admittedly, as at present the Notice of Motion is still pending and the next date is 30/7/2005.

2. Ms. Joglekar, the learned counsel appearing for the respondent no.1-Corporation has placed before me copies of certain documents. It appears that under Section 354 of the Mumbai Municipal Corporation Act, 1888 notice dated 23/5/1985 was issued to the landlady and she did not carry out the repairs. The owner was, therefore, prosecuted and simultaneously Corporation had given authority to the tenant under Section 499 of the MMC Act to carry out the repairs. This action of the Corporation was challenged by the owner in L.C. Suit No.2974 of 1985 and interim injunction was ordered. The suit was finally dismissed in December,

2002. The tenant submitted a representation on 11/11/2003 to the Corporation for revalidation of the repair permission as the suit was dismissed. On 12/12/2003 the Executive Engineer (Special), Zone - III submitted a note for fresh notice to be issued under Section 354 of the Act to the owner and consequently a notice dated 2/2/2005 has been issued but not to the owner. Instead, it has been issued to the tenant treating him to be the owner. The scheme of Section 354 of the Act does not envisage such a notice to be issued to the tenant. The Assistant Engineer who signed this notice dated 2/2/2005 has obviously treated the tenant as the owner and he being realised this mistake, further order has been issued on 21/2/2005 calling upon the tenant to stop the repair work. The said order states that vide notice dated 2/2/2005 repair of broken manglore tiles was allowed but it was noticed that actually reconstruction of the structure was undertaken. Against the order dated 21/2/2005, the tenant has approached the City Civil Court.

3. It is obvious that these documents were not

before the City Civil Court when the impugned order of ad-interim relief was passed and, therefore, the Notice of Motion is required to be decided by taking into consideration all these documents. The Corporation shall place these documents along with its reply before the trial court in the pending Notice of Motion on 30/7/2005. The Notice of Motion No.1719 of 2005 shall be heard and decided on its own merits as expeditiously as possible and preferably by 31st August, 2005. Until the Notice of Motion is decided, status quo as at present in respect of the suit structure shall be maintained. The Notice of Motion taken out by the landlady be also heard along with the Notice of Motion No.1719 of 2005.

4. Appeal stands disposed off accordingly.

(B.H. Marlapalle,J.)